

KEVIN BLACK

CRIMINAL CASE NO. 97-65-001

V.  
UNITED STATES OF AMERICA:

 ORIGINAL

MOTION TO REDUCE SENTENCE PURSUANT TO  
U.S.C. 3582(c)(2)

FILED

AUG 31 2005

U.S. DISTRICT COURT  
DISTRICT OF DELAWARE

Now Comes the defendant ,Kevin Black,pro se  
petitioner as the undersigned,urging this court for a sentence  
reduction pursuant to U.S.C. § 3582(c)(2). In part, section  
3582(c)(2) gives this court discretion to modify a term of  
imprisonment once it has been imposed,"in the case of a defendant  
who has been sentenced to a term of imprisonment based on a  
sentencing range that has subsequently been lowered by the  
Sentencing Commission pursuant to 28 U.S.C. 944(0); upon motion  
of the defendant or the director of the B.O.P, or on it's own  
motion,the court may reduce a term of imprisonment,after considering  
the factors set forth in section 3553(a) to the extent that they  
are applicable,if such reduction is consistent with applicable  
policy statements issued by the Commission." See U.S.C. 3582(c)(2).

In section 1Bl.10(b) of the U.S.S.G. it states in part  
that: (b) In determining whether and to what extent a  
reduction is warranted for a defendant eligible  
for consideration under 18 U.S.C. 3582(c)(2),the  
Court should consider the sentence it would have  
imposed had the amendments to the guidelines listed  
in subsection (c) been in effect at the time the  
defendant was sentenced.

The commentary accompanying U.S.S.G. § 1B1.10(b) instructs the court that in determining the amended guideline range under section (b) the court shall substitute only the amendments listed in subsection(c) for corresponding guideline provisions that were applied when the defendant was sentenced. See U.S.S.G. 1B1.10, commentary n.2. Thus, reading §3582(c)(2) and the U.S.S.G. together, the district court must make two distinct determinations before deciding whether to reduce a defendant's sentence under §3582(c)(2).

First, the court must substitute the amended guideline range and determine what sentence it would have imposed. In undertaking this first step, only the amended guideline is changed. In this case, the amended range for Mr. Black becomes two-fold. One range could be without any unconstitutional enhancements, such as the 4 point enhancement he received pursuant to 2K2.1(b)(5). Thus, Mr. Black's amended range here is base offense level 24, with a 3 point adjustment for acceptance of responsibility, bringing his final range to level 21, category V, 70 to 87 months. However, because the guidelines no longer have the effect or force of law, the judge may also use the same enhanced guideline range of level 28, category V, 100 to 125 months. As an advisory guideline, without the force of law,<sup>1.</sup> the judge may impose "any" sentence below 120 months.

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1. The petitioner does not wholly accept that the courts are permitted under the constitution, to "continue" to enhance defendants, regardless of the guidelines' now non-mandatory nature, and that eventually that issue will be dealt with by the higher courts in the near future.

Second, in light of the conclusion reached in the first step, the court must consider the factors listed in 3553(a) and determine whether or not to reduce the defendant's original sentence.

The petitioner asks this court to lower his sentence to 100 months from the 120 months that he was given. The petitioner moves this court upon such request because the guidelines have been subsequently lowered, because they are no longer mandatory. This ruling has a retroactive effect on all cases not yet final, but does not explicitly exclude cases that are final. Furthermore; simply because "the guidelines have been lowered" 3582(c) applies here. See UNITED STATES V. RAMOS, 971 F.SUPP 199 (E.D. Pa 1997); see also UNITED STATES V TALLY, 920 F.SUPP 597 and UNITED STATES V TAYLOR, 88 F.3d 768, at 771.

The defendant does not ask to be present upon the court's granting of his motion. There is an exception to his mandatory presence under this motion, where his presence is not necessary. See UNITED STATES V FAULKS, 201 F.3d 208 (3rd cir 2000).

**PETITIONER HAS SHOWN EXCEPTIONAL POST REHABILITATION**

From the very outset of Mr. Black's incarceration, he has remained drug free and continues to do so. Black has indulged in just about every program available to inmates while incarcerated. He has furthered his education through corresponding college courses, completed victim's impact group, budgeting, recidivism and

....staying free, parenting one and parenting two, scorekeeping class, Newport Buisiness School real estate, advanced criminal lifestyle, life style issues, carpenters helper, pre-release drug education, and other recreational classes that help Mr. Black through his rehabilitation.<sup>2</sup> Mr. Black does not ask for alot here, but that the court reduces his sentence to 100 months, while adding to the fact that the government, at sentencing, requested 108 months. The government understood that Mr. Black had to first serve an exceptional sentence in New Jersey and Delaware first, in which he served a total of three years prior to serving his federal sentence. Pursuant to B.O.P policy 18 U.S.C. 3584(a), Mr. Black was not credited these 3 years towards his federal sentence, eventhough he was sentenced in federal court first.

#### CONCLUSION

Because the guidelines are now advisory and subsequently lowered, this court should grant petitioner's motion and reduce his sentence to either 108 months as requested by the government or 100 months as requested by the defendant.

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2. See attatchment A.

CERTIFICATE OF SERVICE

I, KEVIN BLACK, hereby certify that three(3) copies of this motion was sent to Court Clerk of the District of Delaware, at 844 King Street, lockbox # 18, Wilmington Delaware 19801, as well as a copy to the U.S. Attorney, Richard Andrews at 1201 Market Street Suit 1100, Wilmington Delaware, 19899.

Respectfully submitted,

Kevin Black 8/23/05  
KEVIN BLACK  
pro se

SCHTO \* INMATE EDUCATION DATA \* 05-26-2005  
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----- EDUCATION INFORMATION -----  
FACL ASSIGNMENT DESCRIPTION START DATE/TIME STOP DATE/TIME  
SCH ESL HAS ENGLISH PROFICIENT 10-27-2000 1400 CURRENT  
SCH GED HAS COMPLETED GED OR HS DIPLOMA 11-03-2000 1355 CURRENT

----- EDUCATION COURSES -----  
SUB-FACL DESCRIPTION START DATE STOP DATE EVNT AC LV HRS  
SCH PRE-REL VICTIM IMPACT GROUP 10-01-2004 CURRENT  
SCH BUDGETING 04-12-2005 04-13-2005 P C P 2  
SCH RECIDIVISM AND LIVING FREE 04-11-2005 04-12-2005 P C P 2  
SCH PARENTING TWO 04-14-2004 06-30-2004 P C P 20  
SCH FCI PAR 1A - PARENTING ONE 01-13-2004 04-02-2004 P C P 20  
SCH SCOREKEEPING CLASS 02-09-2004 02-16-2004 P W V 1  
SCH REAL ESTATE 11-23-2003 02-17-2004 P C P 15  
SCH ADV CRIMINAL LIFESTYLES 07-17-2002 12-18-2002 P C P 30  
SCH LIFE STYLE ISSUES 04-30-2002 07-08-2002 P C P 10  
SCH CARPENTER'S HELPER 7:30-11:30 10-01-2001 11-19-2001 P C E 54  
SCH FCI PRE-RELEASE DRUG EDUCATION 05-31-2001 08-13-2001 P C P 40  
SCH BASKETBALL OFFICIATE 06-06-2001 07-01-2001 P C P 6  
SCH FCI SOFTBALL UMPIRE CLASS 03-21-2001 05-19-2001 P C P 7  
SCH ACE AMER HISTORY VIDEO CLASS 03-05-2001 04-02-2001 P C P 12

G00000 TRANSACTION SUCCESSFULLY COMPLETED

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